



The State of New Hampshire  
*Department of Environmental Services*



Michael P. Nolin  
Commissioner

March 30, 2006

The Honorable Sheila Roberge, Chairman  
Public and Municipal Affairs Committee  
State House, Room 103  
Concord, NH 03301

**SUBJECT: HB 1429, relative to municipal exemptions for hazardous waste liability**

Dear Chairman Roberge and Members of the Committee:

HB 1429, as amended, seeks to establish an exemption to the strict liability provisions of RSA 147-A and 147-B for government entities engaged in transporting household hazardous waste (HHW). Under the provisions of HB 1429, DES will undertake responsibility for the cleanup of any inadvertent spillage of HHW materials during transport by the governmental entity to a regional collection facility. While the likelihood of such spillage is small, it represents a serious concern to municipal entities sponsoring local household hazardous waste collection events. In most, if not all cases, municipalities have been unable to secure relevant insurance. These concerns have been communicated to DES through representatives of the General Court and in various stakeholder meetings over the past year. DES supports passage of HB 1429.

The liability to be undertaken by DES is limited to the strict liability imposed by RSA 147-A and RSA 147-B, namely:

- (a) Containment of hazardous wastes;
- (b) Necessary cleanup and restoration of the site and the surrounding environment; and
- (c) Removal of the hazardous wastes.

Further, the liability protection afforded municipalities and certain municipal employees under this bill is limited to releases occurring during the lawful exercise of municipal action during transportation of HHW to regional collection centers. It does not extend to third party damages such as personal injury. Municipalities traditionally carry general liability insurance for those occurrences. It also does not extend to damages resulting from unlawful activities such as drunk driving.

HHW represents 90% of the toxicity found in municipal solid waste and represents an environmental liability at the disposal facility when mixed with municipal solid waste. For this reason, DES has encouraged and provided funding for the collection of HHW through municipal collection programs. These programs help educate citizens about the products they use and provide them with an opportunity for proper disposal.

The transportation of household hazardous waste to regional collection centers by government entities can help municipalities provide more collection locations to increase public participation in the program and at the same time lower the setup costs of the HHW program through economies of scale. The present liability scheme of RSA 147-A:9 and RSA 147-B:10 creates uncertainty for municipalities and erects barriers to participation in regional collection events. Removing uncertainty on the strict liability issues will encourage municipal participation in regional events.

DES appreciates the opportunity to support this bill. If you have any questions regarding this letter of testimony, please do not hesitate to call me or Anthony P. Giunta, P.G. at 271-2905.

Sincerely,

  
for Michael P. Nolin  
Commissioner

cc: Representative David Knox  
Senator Margaret W. Hassan  
Senator John S. Barnes Jr.  
Senator Joseph D. Kenney  
Senator Andre A. Martel  
Senator Peter H. Burling